

FBT-CV15-6048103-S

DONNA L. SOTO, ADMINISTRATRIX OF THE	:	SUPERIOR COURT
ESTATE OF VICTORIA L. SOTO et al.	:	
	:	JUDICIAL DISTRICT OF
Plaintiffs,	:	FAIRFIELD
	:	
v.	:	AT BRIDGEPORT
	:	
BUSHMASTER FIREARMS INTERNATIONAL,	:	December 11, 2015
LLC, et al.	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS
CAMFOUR, INC.'S AND CAMFOUR HOLDING, INC.'S MOTION
TO DISMISS THE FIRST AMENDED COMPLAINT

Defendants Camfour, Inc. and Camfour Holding, Inc. s/h/a Camfour Holding, LLP a/k/a Camfour Holding, Inc. (collectively referred to as “Camfour”) respectfully submit this memorandum of law in support of their motion to dismiss plaintiffs’ First Amended Complaint pursuant to Practice Book § 10-31(a)(1) and the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901, *et seq.* (“PLCAA”).

I. BACKGROUND

Plaintiffs commenced this action in the Connecticut Superior Court for the Judicial District of Fairfield at Bridgeport on December 13, 2014. Defendants Remington Arms Company, LLC and Remington Outdoor Company, Inc. (collectively referred to as “Remington”) removed this case to the U.S. District Court for the District of Connecticut on January 14, 2015. Plaintiffs’

ORAL ARGUMENT REQUESTED / TESTIMONY NOT REQUIRED

motion to remand was granted, and this case was returned to this Court on or about October 21, 2015. Plaintiffs filed a First Amended Complaint on October 29, 2015. During a November 17, 2015 status conference, this Court directed that motions to dismiss pursuant to Practice Book § 10-31 be filed by December 11, 2015.

According to the allegations in the First Amended Complaint, which are assumed to be true for purposes of this motion only, Remington manufactured a Bushmaster XM15-E2S rifle (“Bushmaster Rifle”) and sold it to Camfour, a federally licensed wholesale distributor of firearms, sometime prior to March of 2010. Am. Compl. ¶¶ 14-30, 176. Camfour sold the Bushmaster Rifle to Riverview Gun Sales, Inc.¹ / David LaGuercia (collectively referred to as “Riverview”), a federally licensed retail dealer of firearms, sometime prior to March of 2010. *Id.* ¶¶ 31-36, 178. Riverview then sold the Bushmaster Rifle to Nancy Lanza on March 29, 2010. *Id.* ¶¶ 182, 223-24.

On December 14, 2012, more than two and a half years after Camfour sold the Bushmaster Rifle to Riverview, Adam Lanza “retrieved” the Bushmaster Rifle and used it to intentionally shoot twenty-eight people, killing twenty-six of them, at the Sandy Hook Elementary School. Am. Compl. ¶¶ 1-3, 187, 201-05. Plaintiffs, representatives of the estates of nine of the people Adam Lanza killed, one person he injured, and the spouse of one of the persons he killed, seek compensatory and punitive damages, as well as unspecified injunctive relief, against Camfour pursuant to the Connecticut wrongful death statute, C.G.S. § 52-555(a), raising causes of action

¹ The First Amended Complaint variously refers to this entity as “Riverview Sales, Inc.,” “Riverview Gun Sales, Inc.” and “Riverview Gun Sales.”

based on negligent entrustment, and violation of the Connecticut Unfair Trade Practices Act, C.G.S. §§ 42-110a, *et seq.* (“CUTPA”).

II. SUMMARY OF THE ARGUMENT

There is no question that the events of December 14, 2012 were tragic. Rather than accepting that Adam Lanza, the person who caused the injuries of which they complain, bears sole responsibility for the shooting, however, plaintiffs have brought suit against the wholesale distributor of the Bushmaster Rifle that he used when committing his crimes. Plaintiffs do not allege that Camfour violated any federal or state laws applicable to the sale or marketing of the Bushmaster Rifle, or even that it sold or transferred the Bushmaster Rifle to Adam Lanza. The allegations they have raised, however, form the basis of a claim that is explicitly prohibited by federal law. More than a decade ago, Congress decided that federally licensed manufacturers and sellers of firearms should not be held liable for claims arising from the criminal use of a firearm and enacted the PLCAA to provide them with immunity from such claims. There is no valid basis upon which to blame Camfour for the crimes that Adam Lanza committed on December 14, 2012; this action should never have been filed.

Plaintiffs’ First Amended Complaint against Camfour must be immediately dismissed pursuant to the PLCAA because their claims against it constitute a “civil action . . . against a seller . . . of [a firearm that has been shipped or transported in interstate commerce] . . . for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief resulting from the criminal or unlawful misuse of [the firearm] by . . . a third party,” 15 U.S.C. § 7903(5)(A), which federal law states “may not be brought in any Federal or State

court, *id.* § 7902(a). Plaintiffs’ allegations against Camfour fail to satisfy any of the narrow exceptions to the definition of a prohibited qualified civil liability action that is barred by the PLCAA.

III. ARGUMENT

A. PLAINTIFFS’ CLAIMS MUST BE IMMEDIATELY DISMISSED PURSUANT TO THE PROTECTION OF LAWFUL COMMERCE IN ARMS ACT

1. Purpose of the Protection of Lawful Commerce in Arms Act

The Protection of Lawful Commerce in Arms Act (“PLCAA”), which was enacted on October 26, 2005, prohibits the institution of a “qualified civil liability action” in any state or federal court, and states that any such “action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.” 15 U.S.C. §§ 7902(a) & (b). One of the stated purposes of the PLCAA is to “prohibit causes of action against . . . dealers of firearms . . . for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.” *Id.* § 7901(b)(1).

The following are among several findings that Congress made regarding the necessity to enact the PLCAA:

- Lawsuits have been commenced against manufacturers, distributors, dealers and importers of firearms that operate as designed and intended which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.
- The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and

local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

- Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

15 U.S.C. §§ 7901(a)(3)-(5). Based upon the above findings, and to achieve the above purpose, the PLCAA states that a “qualified civil liability action may not be brought in any Federal or State court,” *id.* § 7902(2), and requires the immediate dismissal of this case.²

2. The PLCAA Implicates the Court’s Subject Matter Jurisdiction and is Therefore Properly Raised Through a Motion to Dismiss

In Connecticut, a motion to dismiss pursuant to Practice Book § 10-31(a)(1) is used to challenge the court’s lack of jurisdiction over the subject matter of the case. A defendant’s claim that it is entitled to statutory immunity based on the allegations in the complaint implicates the court’s subject matter jurisdiction. *Martin v. Brady*, 802 A.2d 814, 817-20 (Conn. 2002) (holding that whether the allegations in plaintiff’s complaint satisfied the exception to statutory immunity provided by General Statutes § 4-165 for “wanton, reckless or malicious” conduct implicates the court’s subject matter jurisdiction); *see also Jonas v. DeLallo*, No. CV105029297S, 2012 WL 6846396, at *3-*10 (Conn. Super. Ct. Dec. 11, 2012) (holding that the court lacks subject matter

² The claim for loss of consortium by William D. Sherlach (Count Eleven) must be dismissed for the same reasons as the claim for wrongful death he is bringing as the executor of the estate of Mary Joy Sherlach. C.G.S. §§ 52-555a-c.

jurisdiction when the defendant is entitled to absolute immunity based on the allegations in the complaint).

“[S]tatutory immunity involves immunity from suit and is intended to permit courts expeditiously to weed out suits which fail the test without requiring a defendant who rightfully claims qualified immunity to engage in expensive and time consuming preparation to defend the suit on its merits.” *Kelly v. Albertsen*, 970 A.2d 787, 790 (Conn. App. Ct. 2009). *See also Manifold v. Ragaglia*, 891 A.2d 106, 122 (Conn. App. Ct. 2006) (holding that statutory immunity protects a defendant from having to even defend against a lawsuit, not just from liability). Accordingly, “[w]henever the absence of jurisdiction is brought to the notice of the court or tribunal, cognizance of it must be taken and the matter passed upon before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction.” *Baldwin Piano & Organ Co. v. Blake*, 441 A.2d 183, 184 (Conn. 1982) (citations and quotation marks omitted). *See also Kelly*, 970 A.2d at 791 (holding that the “policy that all other action in a case ‘comes to a halt’ once the issue of subject matter jurisdiction has been raised counsels against the allowance of discovery prior to the court’s determination of the jurisdictional issue”).

The PLCAA prohibits a qualified civil liability action from being brought in any Federal or State court. It is accordingly intended to prevent a defendant from having to defend itself from such an action, not just protect it from liability. The only Connecticut court to have previously addressed the issue therefore held that the PLCAA implicates the court’s subject matter jurisdiction and is properly decided on a motion to dismiss. *Gilland v. Sportsmen’s Outpost, Inc.*, No. X04CV095032765S, 2011 WL 2479693, at *2-*17 (Conn. Super. May 26, 2011).

3. This Case is a Qualified Civil Liability Action

As defined by the PLCAA, and subject to six limited exceptions, a “qualified civil liability action” is a

civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product or a trade association, for damages, punitive damages, injunctive or declaratory relief, or penalties or other relief resulting from the criminal or unlawful misuse of a qualified product by the person or a third party. . .

15 U.S.C. § 7903(5)(A). Based on the allegations in the First Amended Complaint, this case is a civil action or proceeding brought by persons (the named plaintiffs) against a seller of a qualified product (Camfour) for damages and other relief resulting from the criminal use (the intentional shooting of twenty-eight people at Sandy Hook Elementary School on December 14, 2012) of a qualified product (the Bushmaster Rifle) by a third party (Adam Lanza). Am. Compl. ¶¶ 1-3, 18, 26-34, 201-02, 204-05.

4. Camfour is a Seller

The PLCAA defines a “seller,” with respect to a qualified product, as “a dealer (as defined in section 921(a)(11) of Title 18) who is engaged in the business² as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under Chapter 44 of

²The PLCAA defines the term “engaged in the business” with reference to 18 U.S.C. § 921(a)(21). 15 U.S.C. § 7903(1). Section 921(a)(21), in turn, defines engaged in the business “as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms” 18 U.S.C. § 921(a)(21)(C).

Title 18.” 15 U.S.C. § 7903(6)(B). Chapter 44 of Title 18, in turn, defines a “dealer” as “any person engaged in the business of selling firearms at wholesale or retail.” 18 U.S.C. § 921(a)(11)(A). As a federally licensed wholesale firearms distributor, Camfour is a “seller” pursuant to the terms of the PLCAA. Am. Compl. ¶¶ 27-28, 30.

5. The Bushmaster Rifle is a Qualified Product

The PLCAA defines a qualified product as “a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of Title 18) . . . that has been shipped or transported in interstate or foreign commerce.” 15 U.S.C. § 7903(4). Pursuant to 18 U.S.C. §§ 921(a)(3)(A), a firearm is defined as “any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” According to the allegations in the First Amended Complaint, Natalie Hammond and the other plaintiffs’ decedents were shot with the Bushmaster Rifle, which is a qualified product pursuant to the terms of the PLCAA. Am. Compl. ¶¶ 1-3, 201-02, 204-05. Further, because the Bushmaster Rifle is alleged to have been manufactured in Maine, transferred to a wholesale distributor in Massachusetts, and then transferred to a retail dealer in Connecticut, it has been shipped or transported in interstate commerce. *Id.* ¶¶ 14-15, 17-18, 26-29, 31-34.

6. Plaintiffs’ Alleged Injuries Resulted from the Criminal Use of a Qualified Product by a Third Party

According to the allegations in the First Amended Complaint, Adam Lanza intentionally shot Natalie Hammond and the other plaintiffs’ decedents with the Bushmaster Rifle. Compl. ¶¶ 1-3, 201-02, 204-05. Accordingly, plaintiffs’ injuries resulted from the criminal use (the intentional shooting of Natalie Hammond and the other plaintiffs’ decedents) of a qualified product

(the Bushmaster Rifle) by a third party (Adam Lanza). *Id.* Plaintiffs' claims against Camfour therefore constitute a qualified civil liability action and the PLCAA requires their immediate dismissal unless they fall within one or more of six narrow exceptions.

B. NONE OF THE EXCEPTIONS TO THE DEFINITION OF A QUALIFIED CIVIL LIABILITY ACTION IS APPLICABLE TO THIS CASE

There are six limited exceptions to the definition of a qualified civil liability action that is barred by the PLCAA:

(i) an action brought against a transferor convicted under section 924(h) of Title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of Title 18;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be

considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of Title 18 or chapter 53 of Title 26.

15 U.S.C. §§ 7903(5)(A)(i-vi). Based on the allegations in the First Amended Complaint, the only exceptions that could even remotely be applicable to plaintiffs' claims against Camfour are 15 U.S.C. §§ 7903(A)(ii) and (iii). As set forth below, however, neither of these limited exceptions to the PLCAA applies to plaintiffs' claims.

1. The Negligent Entrustment Exception to the Protection of Lawful Commerce in Arms Act is Inapplicable

One of the exceptions to the definition of a qualified civil liability action in the PLCAA is “an action against a seller for negligent entrustment. . . .” 15 U.S.C. § 7903(5)(A)(ii). Negligent entrustment is defined in the PLCAA as:

the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

Id. § 7903(5)(B) (emphasis added).

As alleged in the First Amended Complaint, Camfour sold the Bushmaster Rifle to Riverview, a federally licensed firearms dealer, for purposes of resale. Am. Compl. ¶ 223.³ The First Amended Complaint further alleges that Riverview transferred the Bushmaster Rifle to

³ The First Amended Complaint contains numerous paragraphs numbered 213 through 230. Unless otherwise noted, references to paragraphs in this number range are to Count Two of the First Amended Complaint.

Nancy Lanza on March 29, 2010, *id.* ¶ 224 (Count 3), and that it was Adam Lanza, not Nancy Lanza who used the Bushmaster Rifle in a manner involving unreasonable risk of physical injury to others on December 14, 2012. *Id.* ¶¶ 187-90, 201-02, 204-06. The allegations in the First Amended Complaint accordingly establish that the negligent entrustment exception to the PLCAA does not apply to plaintiffs' claims against Camfour because Riverview, the party to which Camfour entrusted the Bushmaster Rifle, did not use it in a manner involving unreasonable risk of physical injury to others.

The negligent entrustment exception has been held not to apply to a distributor selling a firearm to a retail dealer for purposes of resale:

The negligent entrustment exception cannot lie as against a seller unless there is a knowing sale to a person who cannot legally possess it of whom the seller has reason to believe will use the firearm for a purpose other than intended. A review of the legislative history supports a narrow and limited exception to the general protections afforded manufacturers and sellers of firearms under the PLCAA. ****

As is conceded herein, defendant MKS [a wholesale distributor of firearms, like Camfour] did not sell the subject firearm to defendant Caldwell, the ultimate shooter. Instead, defendant MKS sold the firearm to a retailer possessed of a valid federal firearms license [Brown]. Thus, by the definition of negligent entrustment found in the PLCAA, a negligent entrustment cause of action is only actionable herein if defendant MKS sold directly to the person misusing the product. There can be no negligent entrustment cause of action by virtue of MKS' sale to defendant Brown. Therefore, the negligent entrustment cause of action against defendant MKS must be dismissed, as it is not an exception to application of the PLCAA.

Williams v. Beemiller, Inc., No. 7056/2005, at *15 (N.Y. Sup. Ct. Erie Cnty. Apr. 25, 2011),⁴ *rev'd on other grounds*, 952 N.Y.S.2d 333, 339 (App. Div. 4th Dep't 2012).

⁴ A copy of the unpublished decision is attached hereto as Exhibit A.

The Connecticut Superior Court for the Hartford Judicial District has also dismissed a case against a firearms seller on the pleadings pursuant to the PLCAA based on its determination that the requirements for the negligent entrustment exception had not been satisfied. *Gilland*, 2011 WL 2479693, at *16 (holding that the PLCAA applies to “cases where it is alleged that gun sellers negligently cause harm” unless an exception applies). In *Gilland*, plaintiffs alleged that a retail firearms dealer showed a customer, Scott Magnano, a handgun and then left him unattended and alone with it, during which time he “removed” the handgun from the store. *Id.* at *1-*2. More than five weeks later, Magnano used the handgun to shoot his estranged wife. *Id.* In response to defendants’ motion to dismiss pursuant to the PLCAA, plaintiffs argued that their claims should not be dismissed because they fell within the negligent entrustment exception to the PLCAA. *Id.* at *2, *12. The court granted the motion to dismiss, holding that the negligent entrustment exception did not apply because defendants had not supplied the handgun to Magnano for his use, based on the allegations in the complaint that he took it without permission when he was left alone with it. *Id.* at *12-*13.

The allegations in the First Amended Complaint in the present case similarly fail to satisfy the requirements for the negligent entrustment exception to the PLCAA because Camfour did not supply the Bushmaster Rifle to Riverview for its use, and because the sale of a firearm cannot be considered “using” a firearm in a manner involving unreasonable risk of physical injury to others. In addition, Riverview’s sale of the Bushmaster Rifle to Nancy Lanza, even if it is deemed to be a “use” of the Bushmaster Rifle by Riverview for purposes of argument, would still not satisfy the requirements for the negligent entrustment exception to the PLCAA. The First Amended

Complaint does not allege that Camfour knew or should have reasonably known that Riverview was likely to use the Bushmaster Rifle in a manner involving unreasonable risk of physical injury to itself or others. Finally, the lawful sale of a firearm to a federally licensed firearms dealer cannot be considered using a firearm in a manner involving unreasonable risk of physical injury to others without violating the very purpose for which the PLCAA was enacted. 15 U.S.C. §§ 7901(a)(3)-(5).

2. **The Negligence Per Se Exception to the Protection of Lawful Commerce in Arms Act is Inapplicable**

Another exception to the definition of a qualified civil liability action in the PLCAA is an action against a seller for “negligence per se.” Unlike negligent entrustment, the PLCAA does not define the requirements for the negligence per se exception. Pursuant to Connecticut law:

Negligence per se operates to engraft a particular legislative standard onto the general standard of care imposed by traditional tort law principles, i.e., that standard of care to which an ordinarily prudent person would conform his conduct. To establish negligence, the jury in a negligence per se case need not decide whether the defendant acted as an ordinarily prudent person would have acted under the circumstances. They merely decide whether the relevant statute or regulation has been violated. If it has, the defendant was negligent as a matter of law.

Wendland v. Ridgefield Constr. Servs., Inc., 439 A.2d 954, 956 (Conn. 1981). *See also* W. Page Keeton *et al.*, Prosser and Keeton on Torts § 36 at 220 (5th ed. 1984) (“When a statute provides that under certain circumstances particular acts shall or shall not be done, it may be interpreted as fixing a standard for all members of the community from which it is negligence to deviate.”) (emphasis added).

In order for a statute to establish the applicable standard of care, the violation of which constitutes negligence per se, plaintiff “must be within the class of persons protected by the statute,” the injuries sustained by plaintiff “must be of the type the statute was intended to prevent,” and the defendant’s violation of the statute must be “a substantial factor in causing the plaintiff’s damages.” *Gore v. People’s Saving’s Bank*, 665 A.2d 1341, 1348-49, 1349 n.15 (Conn. 1995) (noting that the majority of cases in which the violation of a statute has been found to constitute negligence per se relate to the operation of motor vehicles). The only statute that the First Amended Complaint alleges Camfour to have violated is CUTPA.

The operative provision of CUTPA simply states that “[n]o person shall engage in unfair methods of competition and unfair⁵ or deceptive acts or practices in the conduct of any trade or commerce.”⁶ C.G.S. § 42-110b(a). An action for an alleged violation of CUTPA may only be

⁵ The Connecticut Supreme Court has adopted the Federal Trade Commission’s “cigarette rule” for determining whether a practice is unfair for purposes of CUTPA: “(1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise-whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers [(competitors or other businessmen)].” *McLaughlin Ford, Inc. v. Ford Motor Co.*, 473 A.2d 1185, 1191 (Conn. 1984) (citations omitted).

⁶ CUTPA does not apply to “[t]ransactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States.” C.G.S. § 42-110c(a). As specifically alleged in the First Amended Complaint, the alleged violation of CUTPA by Camfour, a federally licensed wholesale distributor of firearms, is based on its sale of the Bushmaster Rifle to Riverview, a federally licensed retail dealer of firearms, as specifically authorized by statutory authority of the United States as administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Am. Compl. ¶¶ 27, 30-36. In addition, although Connecticut law was subsequently amended, at the time that the Bushmaster Rifle was sold by Camfour, sale of the Bushmaster Rifle was authorized by Connecticut law. C.G.S. § 53-

brought by a “person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by section 42-110b” CUTPA therefore applies only to financial injuries to consumers, competitors, or other businesses resulting from business related activities, such as deceptive advertising, unfair competition, agreements not to compete, etc. *Bernbach v. Timex Corp.*, 989 F. Supp. 403, 412 (D. Conn. 1996) (holding that “CUTPA liability can only arise when there is some form of commercial nexus—business competition, consumer relationships, or similar connections—linking the parties”); *Larsen Chelsey Realty Co. v. Larsen*, 656 A.2d 1009, 1017-20 (Conn. 1995); *McLaughlin Ford, Inc. v. Ford Motor Co.*, 473 A.2d 1185, 1190-91 (Conn. 1984); *Gersich v. Enterprise Rent A Car*, No. 3:95CV01053 AHN, 1995 WL 904917, at *5-*6 (D. Conn. Nov. 20, 1995) (holding that persons injured in a car accident “are not within the class of persons that CUTPA intended to protect”). Based on the allegations in the First Amended Complaint, plaintiffs are not consumers of the Bushmaster Rifle and are not customers or competitors of Camfour. Accordingly, they lack standing to raise a claim against Camfour for violation of CUTPA. Lack of standing is properly raised pursuant to a motion to dismiss. *Fort Trumbull Conservancy, LLC v. New London*, 829 A.2d 801, 806 (Conn. 2003).

CUTPA is not a valid cause of action when plaintiffs seek to recover damages for personal injuries, including death, alleged to have been caused by a product, because the exclusive remedy

202a-i. Accordingly, CUTPA is facially inapplicable to plaintiffs’ factual allegations against Camfour.

in such cases is a product liability claim pursuant to C.G.S. § 52-573m *et seq.*⁷ *Johannsen v. Zimmer, Inc.*, No. 3:00CV2270(DJS), 2005 WL 756509, at *9 (D. Conn. Mar. 31, 2005); *Mountain W. Helicopter, LLC v. Kaman Aerospace Corp.*, 310 F. Supp. 2d 459, 462-64 (D. Conn. 2004); *Gerrity v. R.J. Reynolds Tobacco Co.*, 818 A.2d 769, 773-76 (Conn. 2003) (noting that if a “party brings a CUTPA claim and seeks to use that statutory scheme when the claim is, in reality, one falling within the scope of the product liability act, then the exclusivity provision applies”).

Accordingly, CUTPA cannot serve as the basis for a negligence per se claim based on Connecticut law because it does not set forth particular acts that shall or shall not be done that can serve as the standard of care for a negligence action. In addition, based on the allegations in the First Amended Complaint, plaintiffs are not within the class of persons that CUTPA is designed to protect and the injuries of which they complain are not of the type that CUTPA was designed to prevent. Therefore, the allegations in the First Amended Complaint fail to satisfy the requirements for the negligence per se exception to the PLCAA.

⁷ This argument is properly raised in connection with the motion to dismiss for lack of subject matter jurisdiction pursuant to the PLCAA, instead of through a motion to strike, because plaintiffs must have a valid CUTPA claim based on Connecticut law in order to avail themselves of the negligence per se exception to the PLCAA. The PLCAA states that the exceptions to it do not create any causes of action that do not independently exist. 15 U.S.C. § 7903(5)(C) (“no provision of this chapter shall be construed to create a public or private cause of action or remedy”); *Noble v. Shawnee Gun Shop, Inc.*, 409 S.W.3d 476, 480-82 (Mo. App. W. Dist. 2013) (affirming the dismissal of claims that fell within the PLCAA’s exception for a negligent entrustment action because Missouri state law does not recognize an action against a product seller for negligent entrustment).

3. **The Exception to the Protection of Lawful Commerce in Arms Act Based on the Knowing Violation of a State or Federal Statute Applicable to the Sale or Marketing of Firearms is Inapplicable**

Another of the exceptions to the definition of a qualified civil liability action in the PLCAA is “an action in which a . . . seller of a [firearm or ammunition] knowingly violated a State or Federal statute applicable to the sale or marketing of [firearms or ammunition], and the violation was a proximate cause of the harm for which relief is sought. . . .” 15 U.S.C. § 7903(5)(A)(iii) (“predicate exception”). The PLCAA provides two examples of the narrow types of knowing violations of statutes applicable to the sale or marketing of firearms that are required to justify the application of the predicate exception:

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the [firearm], or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]; or

(II) any case in which the manufacturer or seller aided, abetted or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited

from possessing or receiving a firearm . . . under subsection (g)⁴ or (n)⁵ of section 922 of Title 18. . . .

Id. §§ 7903(5)(A)(iii)(1) & (II).

As discussed above, the only statute that the First Amended Complaint alleges Camfour to have violated is CUTPA. Am. Compl. ¶ 226. The operative provision of CUTPA simply states that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” C.G.S. § 42-110b(a). Preliminarily, it should

⁴“It shall be unlawful for any person — (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; (2) who is a fugitive from justice; (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); (4) who has been adjudicated as a mental defective or who has been committed to a mental institution; (5) who, being an alien — (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26))); (6) who has been discharged from the Armed Forces under dishonorable conditions; (7) who, having been a citizen of the United States, has renounced his citizenship; (8) who is subject to a court order that — (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(g).

⁵“It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” 18 U.S.C. § 922(n).

be noted that the First Amended Complaint does not contain any factual allegations of conduct by Camfour that constitute either “unfair methods of competition” or “unfair or deceptive acts or practices” in the conduct of its wholesale firearms distribution business. Therefore, plaintiffs have failed to allege that Camfour violated CUTPA beyond their *ipse dixit*.

The U.S. Court of Appeals for the Second Circuit has interpreted the predicate exception to the PLCAA as applying only to statutes that either “expressly regulate firearms,” or “clearly can be said to implicate the purchase and sale of firearms.” *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 403 (2d Cir. 2008) (holding that the “predicate exception was meant to apply only to statutes that actually regulate the firearms industry”). *See also Ileto v. Glock, Inc.*, 565 F.3d 1126, 1136 (9th Cir. 2009) (holding that the predicate exception only applies to “statutes that regulate manufacturing, importing, selling, marketing, and using firearms or that regulate the firearms industry”); *Gilland*, 2011 WL 2479693, at *5; *District of Columbia v. Beretta U.S.A. Corp.*, No. 2000 CA 000428 B, 2006 WL 1892023, at *9 (D.C. Super. Ct. May 22, 2006) (holding that the predicate exception is “limited to state statutes regulating the manner in which firearms are sold or marketed”), *aff’d*, 940 A.2d 163 (D.C. 2008).

As discussed above, CUTPA prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” C.G.S. § 42-110b(a). CUTPA does not “expressly regulate firearms” and cannot “clearly . . . be said to implicate the purchase and sale of firearms.” *City of New York*, 524 F.3d at 403. Accordingly, an alleged violation of CUTPA cannot satisfy the predicate exception to the PLCAA.

IV. CONCLUSION

For the above reasons, Camfour respectfully requests that this Court grant its motion to dismiss plaintiffs' First Amended Complaint against it in its entirety (Counts 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, and 32), and grant such other relief as it deems just and proper.

Dated: White Plains, New York
December 11, 2015

Respectfully submitted,

By: /s/ Scott C. Allan (418493)
Christopher Renzulli
crenzulli@renzullilaw.com
Scott C. Allan
sallan@renzullilaw.com
RENZULLI LAW FIRM, LLP (425626)
81 Main Street, Suite 508
White Plains, New York 10601
Telephone: (914) 285-0700
Facsimile: (914) 285-1213

Attorneys for defendants Camfour, Inc. and Camfour Holding, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was served on all counsel of record on December 11, 2015 by virtue of the State of Connecticut Judicial Branch's electronic filing system as well as by first class mail, U.S. postage prepaid to the following addresses:

Joshua D. Koskoff, Esq.
Alinor C. Sterling, Esq.
Katherine Mesner-Hage, Esq.
Koskoff Koskoff & Bieder, PC
350 Fairfield Avenue
Bridgeport, CT 06604

Attorneys for Plaintiffs

Peter M. Berry, Esq.
Berry Law LLC
107 Old Windsor Road, 2nd Floor
Bloomfield, CT 06002

Attorney for Defendants Riverview Sales, Inc.
and David LaGuercia

James B. Vogts, Esq.
Andrew A. Lothson, Esq.
Swanson, Martin & Bell, LLP
330 North Wabash, Suite 3300
Chicago, IL 60611

and

Jonathan P. Whitcomb, Esq.
Scott M. Harrington, Esq.
Diserio Martin O'Connor & Castiglioni LLP
One Atlantic Street
Stamford, CT 06901

Attorneys for Defendants Remington Arms
Company, LLC and Remington Outdoors
Company, Inc.

By: /s/ Scott C. Allan (418493)
Christopher Renzulli
crenzulli@renzullilaw.com
Scott C. Allan
sallan@renzullilaw.com
RENZULLI LAW FIRM, LLP (425626)
81 Main Street, Suite 508
White Plains, New York 10601
Telephone: (914) 285-0700
Facsimile: (914) 285-1213

Attorneys for defendants Camfour, Inc. and Camfour Holding, Inc.